

Attorney Docket # 34250-20CPA

Serial No. **09/578,882**

Amdt. dated March 25, 2004

Reply to Election Requirement dated February 25, 2004

REMARKS

The Examiner alleges that the provisionally elected species of the present application, Species I (FIGS. 1, 2, and 13), represents a separate species than Species II (FIGS. 6 and 8). FIGS. 1, 2, and 13 are three separate embodiments of the present invention. FIGS. 6 and 8 are "blow-ups", i.e., drawings showing the details of the construction, of one component which appears in each of FIGS. 1, 2, and 13. Specifically, FIGS. 6 and 8 shows the details of two different embodiments of the "tunable filter with two states 12" which appears in each of FIGS. 1, 2, and 13.

In other words, FIGS. 1, 2, and 13 might be considered separate species from each other, or perhaps FIGS. 6 and 8 might be considered separate species from each other, but FIGS. 1, 2, and 13 do not represent a separate and distinct species from FIGS. 6 and 8. As stated above, FIGS. 6 and 8 show two different embodiments of a component (i.e., tunable filter 12) in *each* of FIGS. 1, 2, and 13. By definition, Species I (FIGS. 1, 2, and 13) can not represent a separate species from Species II (FIGS. 6 and 8), nor do they represent the same species; in fact, one "species", Species II (FIGS. 6 and 8), represents implementations of a single component in the other "species", Species I (FIGS. 1, 2, and 13).

In short, the Election of Species is traversed because Species I (FIGS. 1, 2, and 13) and Species II (FIGS. 6 and 8) are not different species of a single genus, but rather Species II (FIGS. 6 and 8) is two embodiments of a component (tunable filter 12) which appears in Species I (FIGS. 1, 2, and 13). For at least these reasons, Applicant respectfully requests that the Examiner reconsider and, upon reconsideration, withdraw the Election Requirement. If not, Applicant respectfully requests that the Examiner repeat the Requirement, making it final under 37 CFR §1.143, so that Applicant may petition the Commissioner under 37 CFR §1.144 to withdraw the Requirement.

Amendments have been made to the specification in order to clarify the inherent relationships between the drawings. None of the amendments include new matter: support for the amendments on pages 13 and 14 may be found in the originally filed specification at least on page 9 at lines 3-4; support for the amendments on pages 19 and 22 may be found in the originally filed specification at least on page 9 at lines 5-7; and support for the amendments on page 24 may be found in the originally filed specification at least on page 10 at lines 13-15.

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Claims 29-33 have been added in the present Amendment. They contain no new matter (support for Claims 29, 30, and 32 may be found at least in originally filed Claim 18; support for Claims 31 and 33 may be found at least at lines 11-13 of page 12 in the originally filed specification) and are believed to be in condition for allowance, at least through their dependence on independent Claims 1, 21, and 22, which are believed to be in condition for allowance.

Based at least on the foregoing amendments and arguments, Applicant respectfully requests withdrawal of the Election of Species Requirement, entry of the present Amendment, and allowance of all pending claims.

Respectfully submitted,
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